

**SCHAPIRO DECLARATION  
EXHIBITS CONTINUED**

# **Schapiro Exhibit 130**

09:38:33

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY )  
PARTNERS, COUNTRY MUSIC. )  
TELEVISION, INC., PARAMOUNT )  
PICTURES CORPORATION, and BLACK )  
ENTERTAINMENT TELEVISION, LLC, )  
 )  
Plaintiffs, )  
 )  
vs. ) NO. 07-CV-2203  
 )  
YOUTUBE, INC., YOUTUBE, LLC, )  
and GOOGLE, INC., )  
 )  
Defendants. )  
 )  
\_\_\_\_\_)  
 )  
THE FOOTBALL ASSOCIATION PREMIER )  
LEAGUE LIMITED, BOURNE CO., et al., )  
on behalf of themselves and all )  
others similarly situated, )  
 )  
Plaintiffs, )  
vs. ) NO. 07-CV-3582  
 )  
YOUTUBE, INC., YOUTUBE, LLC, and )  
GOOGLE, INC., )  
 )  
Defendants. )  
\_\_\_\_\_)

HIGHLY CONFIDENTIAL  
VIDEOTAPED DEPOSITION OF DOUG HERZOG  
PALO ALTO, CALIFORNIA  
FRIDAY, JANUARY 16, 2009

JANUARY 16, 2009

9:40 a.m.

HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF  
DOUG HERZOG, at WILSON SONSINI GOODRICH &  
ROSATI, 601 South California, Palo Alto,  
California pursuant to notice, before me,  
ANDREA M. IGNACIO HOWARD, CLR, CCRR, RPR, CSR  
License No. 9830.

## A P P E A R A N C E S:

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GOOGLE, INC.:

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BART E. VOLKMER, Esq.

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bvolkmer@wsgr.com

ALSO PRESENT:

Michelena Hallie, MTV Networks

Mark Morril, Viacom

Jan Trudell, Videographer.

---oOo---

HERZOG

1  
2 09:54:26 A More than five.  
3 09:54:26 Q Okay. More than 100?  
4 09:54:30 A More than 100? Not sure.  
5 09:54:32 Q How often do you view videos on the YouTube  
6 09:54:37 service?  
7 09:54:38 A Once or twice a week.  
8 09:54:40 Q Do you view videos on the YouTube service  
9 09:54:44 while you're at work?  
10 09:54:47 A Occasionally.  
11 09:54:48 Q While you're at home?  
12 09:54:49 A Occasionally.  
13 09:54:50 Q While you're on the road?  
14 09:54:51 A Occasionally.  
15 09:54:52 Q Why do you use YouTube to view videos as  
16 09:54:58 opposed to some other online video sharing service?  
17 09:55:01 MS. KOHLMANN: Objection as to form.  
18 09:55:02 THE WITNESS: I use other video sharing, or  
19 09:55:09 I -- I might watch video on the Internet in places  
20 09:55:13 other than YouTube.  
21 09:55:14 MR. KRAMER: Q. But why do you continue to  
22 09:55:16 use YouTube today, given the existence of this  
23 09:55:19 litigation?  
24 09:55:20 MS. KOHLMANN: Objection as to form.  
25 09:55:21 THE WITNESS: I don't know.

HERZOG

1  
2 09:55:23 MR. KRAMER: Q. Do you find that the YouTube  
3 09:55:29 video service has advantages over other online video  
4 09:55:32 services?  
5 09:55:36 A I find there's a lot of videos there.  
6 09:55:40 Q Any other distinguishing characteristics of  
7 09:55:45 the YouTube service vis-a-vis other online video  
8 09:55:51 sharing services you've used?  
9 09:55:52 A Couldn't say.  
10 09:55:53 Q Okay. Do you consider your use of the  
11 09:55:54 YouTube service to be legitimate?  
12 09:55:56 MS. KOHLMANN: Objection as to form.  
13 09:55:57 You can answer.  
14 09:55:58 THE WITNESS: I -- I do.  
15 09:55:59 MR. KRAMER: Q. For the videos that you've  
16 09:56:04 watched on YouTube, did you consider them to be  
17 09:56:06 infringing any third party's copyrights?  
18 09:56:12 A I wouldn't know.  
19 09:56:12 Q What do you mean you wouldn't know?  
20 09:56:14 A I -- I -- I'm just not that clear on -- I  
21 09:56:16 wouldn't know.  
22 09:56:16 Q Why not?  
23 09:56:17 A I'm not a lawyer. I don't necessarily  
24 09:56:19 understand the ins and outs of copyright infringement.  
25 09:56:25 Q So in order to make a determination as to

HERZOG

1  
2 09:56:27 whether a video you've watched on the YouTube service  
3 09:56:29 was infringing a third-party's copyrights, you'd need  
4 09:56:34 to be a lawyer?

5 09:56:35 A I just --

6 09:56:35 MS. KOHLMANN: Objection to form.

7 09:56:36 THE WITNESS: -- wouldn't know.

8 09:56:37 MR. KRAMER: Right.

9 09:56:38 Q I'm asking you why you wouldn't know.

10 09:56:40 A Because I would not know.

11 09:56:40 Q Well, don't you have the ability to tell when  
12 09:56:43 you're looking at a particular video whether that  
13 09:56:46 video is authorized by the copyright holder?

14 09:56:49 MS. KOHLMANN: Objection as to form.

15 09:56:50 You can answer.

16 09:56:51 THE WITNESS: I wouldn't -- I -- I wouldn't  
17 09:56:51 know unless it was my video.

18 09:56:53 MR. KRAMER: Q. Would you say you're a fan  
19 09:57:06 of the YouTube service, Mr. Herzog?

20 09:57:09 A Yeah.

21 09:57:10 Q In fact, sir, you'd say you love YouTube;  
22 09:57:15 right?

23 09:57:16 MS. KOHLMANN: Objection as to form.

24 09:57:18 You can answer.

25 09:57:19 THE WITNESS: I -- I would -- I would not.



HERZOG

1  
2 10:40:01 MR. KRAMER: Q. What other properties,  
3 10:40:31 Mr. Herzog, would you say your statement holds true  
4 10:40:34 for, that the idea that you go to the store and  
5 10:40:39 purchase DVDs is a different experience than going to  
6 10:40:43 the web and snacking and sharing? Would it hold true  
7 10:40:48 for Daily Show?  
8 10:40:48 A No.  
9 10:40:48 Q Would it hold true for the Colbert Report?  
10 10:40:50 A You know, I don't know. Actually, no.  
11 10:40:51 The Daily Show and Colbert are completely  
12 10:40:52 different types of programs than South Park. So, you  
13 10:40:54 know, I don't know the answer to that. I was speaking  
14 10:40:56 specifically about South Park, and that's what I  
15 10:40:58 believe to be the case in terms of South Park.  
16 10:41:00 Q So do you believe that the availability of  
17 10:41:02 the Colbert Report online has a negative impact on DVD  
18 10:41:06 sales of the program?  
19 10:41:06 MS. KOHLMANN: Objection as to form.  
20 10:41:08 You can answer.  
21 10:41:08 THE WITNESS: Colbert doesn't have a DVD  
22 10:41:12 business of any -- you know, I mean, he -- we put out  
23 10:41:14 DVDs, but it's -- it's a different type of program.  
24 10:41:18 It's a timely, topical program and its value on DVD  
25 10:41:22 is -- is minimal.

1 HERZOG

2 10:41:22 MR. KRAMER: How about --

3 10:41:23 THE WITNESS: -- versus a South Park, which

4 10:41:24 is something that we hope will live forever.

5 10:41:26 MR. KRAMER: Q. How about the Daily Show?

6 10:41:29 A The same thing.

7 10:41:30 Q Similar to the Colbert Report --

8 10:41:32 A Yes --

9 10:41:32 Q -- in that regard?

10 10:41:33 A -- timely, topical show, and those shows have

11 10:41:35 an expiration date on them.

12 10:41:36 Q Do you put out DVDs for Co- -- Daily Show?

13 10:41:40 A We -- like compilations.

14 10:41:41 Q And do you think the availability of the

15 10:41:43 Daily Show online has a positive or negative impact on

16 10:41:47 DVD sales of those Daily Show compilations?

17 10:41:54 A Couldn't say.

18 10:42:12 Q Mr. Herzog, you testified earlier that you

19 10:42:14 use the YouTube service; right?

20 10:42:16 A I do.

21 10:42:16 Q Are you familiar with the -- with content

22 10:42:18 owners creating channels on the YouTube service?

23 10:42:22 A I -- yeah, I mean, I -- I -- I feel like I

24 10:42:25 know -- I've heard about it. Know about it.

25 10:42:27 Q Hasn't one of your properties at MTV Networks

1 HERZOG

2 10:42:31 created a channel for YouTube?

3 10:42:33 A I don't know.

4 10:42:33 Q Aren't you aware that Spike TV had a channel

5 10:42:36 on YouTube?

6 10:42:37 A No.

7 10:42:37 Q Do you know whether Spike TV ever posted its

8 10:42:43 content to YouTube?

9 10:42:44 A I don't know for sure.

10 10:42:44 (Document marked Herzog Exhibit 3

11 10:43:24 for identification.)

12 10:43:24 MR. KRAMER: Q. Mr. Herzog, what's been

13 10:43:26 marked as Exhibit 3 to your deposition is a document

14 10:43:29 that is an e-mail thread produced to us in discovery

15 10:43:31 by Viacom bearing Bates No. VIA 00518503.

16 10:43:38 By the way, when I say "Bates No.," I'm

17 10:43:41 referring to the number on the bottom --

18 10:43:43 A Got it.

19 10:43:43 Q -- right-hand corner of the document.

20 10:43:45 The subject line of the e-mail is, "Blindfold

21 10:43:49 Kickboxing," and you are CCed on the last in time and

22 10:43:52 second to last in time e-mails in the thread.

23 10:43:55 I'll ask you, first, whether you recognize

24 10:43:57 this document?

25 10:43:59 A This one, I don't.

# **Schapiro Exhibit 131**

English

Videos | Shows | Channels | Community | Upload

Sign Up | QuickList | Help | Sign In

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Videos | Favorites | Playlists | Groups | Friends | Subscribers | Subscriptions

## theodoramichaels's Channel

Subscribe



**theodoramichaels**  
 Joined: November 06, 2008  
 Last Sign In: 1 day ago  
 Videos Watched: 468  
 Subscribers: 2  
 Channel Views: 437

Name: Theodora  
 Geeky vegetarian rock 'n' roll attorney.  
 City: Queens, NYC  
 Hometown: Queens, NYC  
 Country: United States  
 Website: <http://www.theodoramichaels.com>

## Connect with theodoramichaels

Send Message

Add Comment

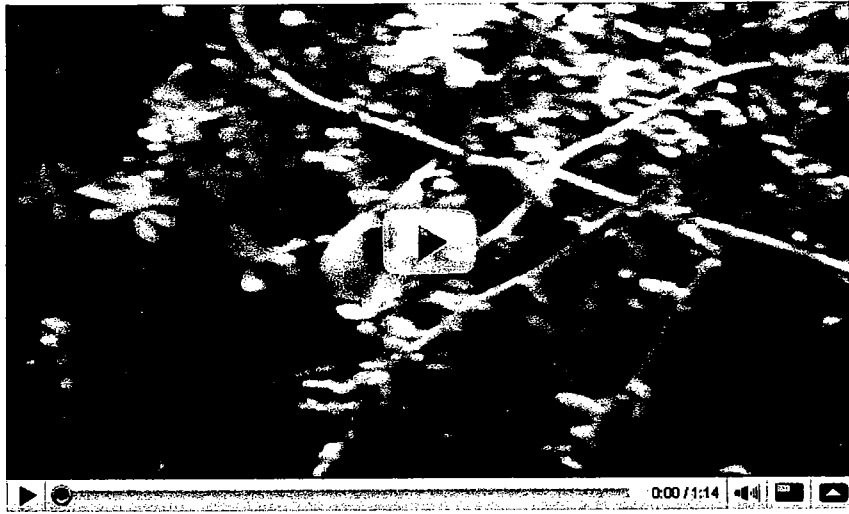
Share Channel

Add to Google

<http://www.youtube.com/theodoramichaels>

## Embed This Channel:

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<script src="http://www.google.com/gg/iframe/channel/vv.google.com/theodoramichaels"></script>
```



## A Goldfinch!

From theodoramichaels  
 Views: 23  
 Comments: 1

## Recent Activity

theodoramichaels became friends with  
 JessicaLukes (1 day ago)

theodoramichaels subscribed to slaveshyfilms  
 (1 week ago)

theodoramichaels uploaded a new video  
 (1 month ago)



**A Goldfinch!**  
 A goldfinch eating chicory seeds,  
 right in my own backyard! I never  
 saw... more

theodoramichaels uploaded a new video  
 (1 month ago)



**Best of The View**  
 I've never seen the show, but that's  
 my Kevin in the red shirt,  
 dancing... more

theodoramichaels subscribed to daddytapes  
 (3 months ago)

## Subscriptions (14)



tromskovin



Barack Obama...



Monty Python



pulsed in...



kinyahaw...



househub

see all

## Friends (2)



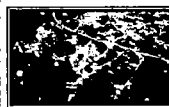
sir xia do...



JessicaLukes

## Videos (11)

Videos | Most Viewed | Most Discussed



## A Goldfinch!

1 month ago  
 23 views  
 no rating  
 theodoramichaels



## Thelma dances

8 months ago  
 352 views

★★★★★ theodoramichaels



## Thelma has a bath

9 months ago  
 305 views

★★★★★ theodoramichaels



## Best of The View

1 month ago  
 28 views  
 no rating  
 theodoramichaels



## Thelma wears a hat

8 months ago  
 80 views

★★★★★ theodoramichaels



## Tolkien v. New Line in plain Eng...

9 months ago  
 66 views

★★★★★ theodoramichaels



## Thelma Garnett in: LOLbaby

8 months ago  
 151 views

★★★★★ theodoramichaels



## Dramatic Thelma

9 months ago  
 137 views

★★★★★ theodoramichaels



## Tolkien v. New Line in plain Eng...

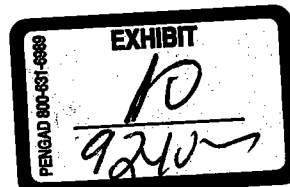
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★★★★★ theodoramichaels

see all

## Favorites (7)

Subscribe To Favorites



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Subscribers (2)



tomakewin



kanyhawkeboss

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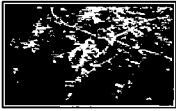
Channel Comments

There are no comments for this user.

[Add Comment](#)


Videos (11)

Videos | Most Viewed | Most Discussed




**A Goldfinch!**

1 month ago  
24 views  
no rating  
theodoramichaels




**Best of The View**

1 month ago  
30 views  
no rating  
theodoramichaels




**Thelma Garnett in: LOLbaby**

8 months ago  
151 views  
★★★★★  
theodoramichaels




**Thelma dances**

8 months ago  
352 views  
★★★★★  
theodoramichaels




**Thelma wears a hat**

8 months ago  
80 views  
★★★★★  
theodoramichaels




**Dramatic Thelma**

9 months ago  
137 views  
★★★★★  
theodoramichaels



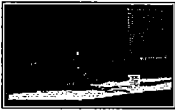
**Thelma has a bath**

9 months ago  
306 views  
★★★★★  
theodoramichaels




**Tolkien v. New Line in plain Eng...**

9 months ago  
66 views  
★★★★★  
theodoramichaels




**Tolkien v. New Line in plain Eng...**

9 months ago  
59 views  
★★★★★  
theodoramichaels



**Tolkien v. New Line in plain Eng...**

9 months ago  
125 views  
★★★★★  
theodoramichaels



**Sean Astin at Dragon\*Con, Aug. 3...**

10 months ago  
110 views  
★★★★★  
theodoramichaels

Subscribe to theodoramichaels's videos

Search

Report background graphic.

http://www.youtube.com/profile?user=theodoramichaels&view=videos

9/24/2009

## **Schapiro Exhibit 132**



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

VIACOM INTERNATIONAL, INC., COMEDY  
PARTNERS, COUNTRY MUSIC  
TELEVISION, INC., PARAMOUNT  
PICTURES CORPORATION, and BLACK  
ENTERTAINMENT TELEVISION, LLC,

Plaintiffs,

vs.

No. 07-CV-2103

YOUTUBE, INC., YOUTUBE, LLC,  
and GOOGLE, INC.,

Defendants.

-----X

HIGHLY CONFIDENTIAL

VIDEOTAPED DEPOSITION OF  
NICHOLAS SEET/AUDITUDE, INC.  
SAN FRANCISCO, CALIFORNIA  
TUESDAY, NOVEMBER 24, 2009

JOB NO. 18254

Nicholas Seet San Francisco, CA November 24, 2009

NOVEMBER 24, 2009

9:17 P.M.

HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF  
NICHOLAS SEET, at WILSON, SONSINI, GOODRICH & ROSATI, 1  
Market Plaza, Spear Tower, Suite 3400, San Francisco,  
California, pursuant to notice, before me, KATHERINE E.  
LAUSTER, CLR, CRR, RPR, CSR License No. 1894.

Nicholas Seet San Francisco, CA November 24, 2009

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fax: 650.493.6811  
nmlaninia@wsgr.com

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Redacted at the Request of Auditude



## **Schapiro Exhibit 133**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY )  
PARTNERS, COUNTRY MUSIC. )  
TELEVISION, INC., PARAMOUNT )  
PICTURES CORPORATION, and BLACK )  
ENTERTAINMENT TELEVISION, LLC, )  
 )  
Plaintiffs, )  
 )  
vs. ) NO. 07-CV-2103  
 )  
YOUTUBE, INC., YOUTUBE, LLC, )  
and GOOGLE, INC., )  
 )  
Defendants. )  
 )

THE FOOTBALL ASSOCIATION PREMIER )  
LEAGUE LIMITED, BOURNE CO., et al., )  
on behalf of themselves and all )  
others similarly situated, )  
 )  
Plaintiffs, )  
vs. ) NO. 07-CV-3582  
 )  
YOUTUBE, INC., YOUTUBE, LLC, and )  
GOOGLE, INC., )  
 )  
Defendants. )  
 )

VIDEOTAPED DEPOSITION OF MIKA SALMI  
SAN FRANCISCO, CALIFORNIA  
FRIDAY, OCTOBER 16, 2009

JOB NO. 17909



OCTOBER 16, 2009

9:30 a.m.

VIDEOTAPED DEPOSITION OF MIKA SALMI,  
WILSON, SONSINI, GOODRICH & ROSATI, LLP,  
One Market Street, Spear Street Tower,  
San Francisco, California pursuant to notice,  
and before, ANDREA M. IGNACIO HOWARD, CLR,  
RPR, CRR, CSR License No. 9830.

A P P E A R A N C E S:

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GOOGLE, INC.:

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Palo Alto, California 94304-1050

(650) 320-4741 dkramer@wsgr.com

ALSO PRESENT: Michelena Hallie, MTV Networks.

Lou Meadows, Videographer.

---oOo---

1 SALMI, M.

2 10:04:52 analysis, and both from a technical and legal side

3 10:04:56 that I can't sit here and make an opinion on right

4 10:04:57 now.

5 10:04:58 MR. KRAMER: Q. When it launched

6 10:05:13 AddictingClips, did the service -- sorry. Strike

7 10:05:15 that.

8 10:05:15 When the AddictingClips service launched, did

9 10:05:19 it have human beings screening all videos that users

10 10:05:22 were uploading to the service for potentially

11 10:05:24 unauthorized copyrighted material?

12 10:05:26 A No.

13 10:05:26 Q Roughly how many videos per day were uploaded

14 10:05:32 to the service?

15 10:05:34 A I don't recall.

16 10:05:35 Q Is it in the hundreds? Thousands? Tens?

17 10:05:40 A It varied from when it launched to, you know,

18 10:05:43 a period of time, but...

19 10:05:45 Q How about at the start?

20 10:05:48 A Hundreds, I'd guess.

21 10:05:52 Q You said that AddictingClips didn't want to

22 10:05:55 have unauthorized copyrighted material appearing on

23 10:05:57 the service; right?

24 10:06:04 A I think I said it wasn't a stated intention

25 10:06:06 of ours to have it up there, but...

SALMI, M.

10:06:08 Q Did -- did -- did AddictingClips want

10:06:10 unauthorized copyrighted material?

10:06:11 A No.

10:06:12 Q Wouldn't one way of keeping that material off

10:06:16 the service have been to have human beings review all

10:06:19 incoming videos and block those that weren't

10:06:22 authorized?

10:06:28 A AddictingClips was set up differently than

10:06:30 Atom Films, which was all about review.

10:06:32 AddictingClips was set up as a user-generated website

10:06:36 according to the legal parameters that our lawyer

10:06:38 provided us.

10:06:39 Q But wouldn't one way of keeping unauthorized

10:06:42 copyrighted material off the service have been to have

10:06:46 human beings screening all of the videos that users

10:06:48 sought to upload and block the upload of those that

10:06:50 were unauthorized copyrighted material?

10:06:52 MR. WILKENS: Objection to the form.

10:06:54 THE WITNESS: That would be one way to do it,

10:06:55 yes.

10:06:56 MR. KRAMER: All right.

10:06:56 Q So when I asked you earlier whether

10:06:59 AddictingClips could have done more to prevent the

10:07:02 upload by users of unauthorized copyrighted materials,

1 SALMI, M.

2 10:07:05 one thing it could have done was employ human beings  
3 10:07:08 to screen all videos uploaded by users and block those  
4 10:07:12 that were unauthorized; right?

5 10:07:16 A Then it would not have been a user-generated  
6 10:07:19 website the way we had envisioned it to be if it would  
7 10:07:24 have done that. It would also have been  
8 10:07:26 cost-prohibitive to have human beings.

9 10:07:28 Q Why so?

10 10:07:29 A That's a lot of clips to...

11 10:07:32 Q Hundreds of clips a day is a lot of clips,  
12 10:07:35 and it would be cost-prohibitive to have human beings  
13 10:07:38 screen them; right?

14 10:07:38 MR. WILKENS: Objection to the form.

15 10:07:39 THE WITNESS: For a small company like ours,  
16 10:07:41 yes.

17 10:07:41 MR. KRAMER: Okay.

18 10:07:48 Q Is it reasonable to conclude, based on Atom's  
19 10:07:51 failure to employ human beings to screen videos  
20 10:07:54 uploaded to the service, that Atom wanted users to  
21 10:07:59 upload infringing material to AddictingClips?

22 10:08:03 MR. WILKENS: Objection to the form; asked  
23 10:08:08 and answered.

24 10:08:08 THE WITNESS: Yeah, there was not a failure.

25 10:08:09 It was set up purposely in a certain methodology, so I

1 SALMI, M.

2 10:08:16 would not call it a failure to do either one, your

3 10:08:20 statement.

4 10:08:20 MR. KRAMER: Okay.

5 10:08:21 Q Would it be reasonable to conclude, based on

6 10:08:23 AddictingClips's decision not to employ human beings

7 10:08:28 to screen videos uploaded to the service by users,

8 10:08:31 that AddictingClips wanted users to upload potentially

9 10:08:35 unauthorized copyrighted material?

10 10:08:37 A No, that's false. We -- we never -- we never

11 10:08:42 even had the decision not to have human beings. It

12 10:08:45 was -- it was always set up a different way.

13 10:08:48 Q It wouldn't be reasonable to conclude, that

14 10:08:50 is what you're saying?

15 10:08:51 A Correct, not reasonable to conclude that.

16 10:08:54 Q And Atom -- sorry -- AddictingClips -- I

17 10:08:58 guess it's -- Atom's choice not to have human beings

18 10:09:04 screening videos uploaded to the service by users

19 10:09:07 wasn't motivated by a desire to earn advertising

20 10:09:11 revenue from unauthorized copyrighted material on the

21 10:09:14 service; right?

22 10:09:14 MR. WILKENS: Objection to the form.

23 10:09:17 THE WITNESS: It was strictly done that way

24 10:09:21 as a -- on the advice of our legal counsel.

25 10:09:25 MR. KRAMER: Different question than I asked.

## **Schapiro Exhibit 134**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X

VIACOM INTERNATIONAL, INC., COMEDY  
PARTNERS, COUNTRY MUSIC TELEVISION,  
INC., PARAMOUNT PICTURES CORPORATION,  
and BLACK ENTERTAINMENT TELEVISION,  
LLC,

Plaintiffs,

vs. NO. 07-CV-2203

YOUTUBE, INC., YOUTUBE, LLC,  
and GOOGLE, INC.,

Defendants.

-----X

VIDEOTAPED DEPOSITION OF JASON WITT

NEW YORK, NEW YORK

THURSDAY, SEPTEMBER 25, 2008

REPORTED BY:  
JENNIFER OCAMPO-GUZMAN  
JOB NO.: 15651



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5 SEPTEMBER 25, 2008  
6 9:14 a.m.  
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8 VIDEOTAPED DEPOSITION OF JASON  
9 WITT, held at the offices of WILSON SONSINI  
10 GOODRICH & ROSATI, PC, 1301 Avenue of the  
11 Americas, New York, New York, pursuant to  
12 agreement of parties, before JENNIFER  
13 OCAMPO-GUZMAN, a Real-Time Shorthand Reporter  
14 and Notary Public of the State of New York.  
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## A P P E A R A N C E S:

FOR THE PLAINTIFFS VIACOM INTERNATIONAL,  
INC.:

JENNER & BLOCK, LLP

By: AMY L. TENNEY, Esq.

1099 New York Avenue, NW, Suite 900

Washington, D.C. 20001

(202) 639-6000      atteney@jenner.com

FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE,  
LLC and GOOGLE, INC.:

WILSON SONSINI GOODRICH & ROSATI, PC

BY: BART E. VOLKMER, ESQ.

-and-

CHRISTOPHER R. HOWALD, ESQ.

650 Page Mill Road

Palo Alto, California 94304-1050

650-565-3508      bvolkmer@wsgr.com

650-496-4064      chowald@wsgr.com

## ALSO PRESENT:

MTV NETWORKS

By: HEATHER WINDT, ESQ., Senior Counsel

MANUEL ABRUE, Videographer

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Witt

14:48:50 Q. Right. Do you know if anyone at  
14:48:51 Viacom has ever uploaded videos to the  
14:48:54 YouTube website?

14:48:55 MS. TENNEY: And I'll restate the  
14:48:57 same objections.

14:48:58 A. You know, gosh, I don't know. I  
14:49:18 remember Jason Hershorn (phonetic) at one  
14:49:18 time, and I'm not sure if he was making a  
14:49:20 joke or not, talked about uploading some Bar  
14:49:24 Mitzvah videos.

14:49:27 Greg Clayman has uploaded some  
14:49:29 videos of his kids and his wife, I think. My  
14:49:52 guess is there is more, but those are the  
14:49:54 ones I can think of.

14:49:55 Q. So besides Jason Hershorn and Greg  
14:50:02 Clayman, you can't think of any other  
14:50:04 instances where Viacom employees uploaded  
14:50:06 videos to the YouTube website?

14:50:30 A. There may be others, but I can't  
14:50:32 recall.

14:50:32 Q. Have you ever viewed video clips on  
14:50:41 the YouTube website containing Viacom content  
14:50:44 that you believed were not authorized by  
14:50:47 Viacom?

1 Witt

2 14:50:48 MS. TENNEY: Objection. To the

3 14:50:51 extent that it calls for a legal

4 14:50:52 conclusion and also that it's vague.

5 14:50:56 A. By authorized, I've watched, I've

6 14:51:07 seen Viacom content on YouTube.

7 14:51:10 Q. And have you ever seen Viacom

8 14:51:12 content on YouTube that you thought was

9 14:51:14 unauthorized?

10 14:51:14 A. I'm not sure I know what

11 14:51:16 unauthorized means, in what sense?

12 14:51:20 Q. Whether Viacom was permitting that

13 14:51:22 content to be on YouTube?

14 14:51:25 MS. TENNEY: Objection.

15 14:51:27 A. I wouldn't know.

16 14:51:30 Q. What information would you need to

17 14:51:33 make that determination?

18 14:51:35 A. Probably someone from legal telling

19 14:51:38 me if it was -- I mean if it were authorized,

20 14:51:44 that would be a determination I imagine legal

21 14:51:48 would be able to answer.

22 14:51:49 THE WITNESS: Could I take a quick

23 14:51:51 bathroom break?

24 14:51:52 MR. VOLKMER: Break, yeah.

25 14:51:53 THE WITNESS: Yes.

1 Witt

2 14:51:54 MR. VOLKMER: We can go off the

3 14:51:56 record.

4 14:51:56 THE VIDEOGRAPHER: The time is

5 14:52:02 2:54 p.m. We're going off the record.

6 14:52:04 (A brief recess was taken.)

7 15:07:32 THE VIDEOGRAPHER: The time is

8 15:07:38 3:07 p.m. We're back on the record.

9 15:07:41 BY MR. VOLKMER:

10 15:07:41 Q. Before the break you had testified

11 15:07:44 that you had viewed Viacom content on the

12 15:07:46 YouTube website; correct?

13 15:07:46 A. Yes.

14 15:07:50 Q. And were there ever instances where

15 15:07:53 you viewed content that had been authorized

16 15:07:55 by Viacom?

17 15:07:56 MS. TENNEY: Objection, to the

18 15:07:57 extent it calls for a legal conclusion.

19 15:08:02 (Discussion off the record.)

20 15:08:04 MS. TENNEY: And that it's vague.

21 15:08:05 A. I suppose it's possible that Viacom

22 15:08:15 and YouTube had agreed to some kind of a deal

23 15:08:17 to authorize the content but not that I was

24 15:08:21 aware of.

25 15:08:22 Q. Not that you were aware of when you

## **Schapiro Exhibit 135**

—  

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**From:** Mark M. Ishikawa  
**Sent:** Monday, July 10, 2006 7:37 PM  
**To:** Scott Martin  
**Cc:** Alfred Perry; John Salter; Evelyn Espinosa; Arielle Kim  
**Subject:** Anti-Piracy discussion topics for Wed.

Scott,

Thanks for the invite to the Wednesday meeting. I do believe that we need to sit down with Amy and Nancy to clear the air about the services that they require, and how to get their needs satisfied without having them create their own anti-piracy department. I also want to set Amy's expectations for what we can and cannot do for her. From our conversations and e-mails it would appear that they need some education as to how the DMCA works, and the level of response we can and cannot get from the ISP's in question.

Thx

Mark

=====  
Topics:

1) Coordination between Online Marketing and BayTSP

- Advance notice of when and where marketing materials being posted online.
- Copies of material being posed so we can distinguish between authorized and un-authorized materials.
- Post-Mortum of the Transformers project.

2) Determination of takedown policy and procedures

- There seems to be a level of mis-understanding about the services BayTSP provides for Paramount and Viacom by the different groups within the studio. I would like to discuss exactly what we do, and how we do it with the Marketing group so they have a better understanding of the services we provide. I also believe that there is a lack of understanding as to what the Online Piracy program in place at the studio does and its capabilities.
- Determine if there is a different procedure required for the Marketing Department infringements, and define the EXACT procedures that are to be used when the Marketing Department is involved.
- Determine the Anti-Piracy needs of the Marketing Department.

6/20/2008

HIGHLY CONFIDENTIAL

BAYTSP 003722239

# **Schapiro Exhibit 136**



UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY )  
PARTNERS, COUNTRY MUSIC. )  
TELEVISION, INC., PARAMOUNT )  
PICTURES CORPORATION, and BLACK )  
ENTERTAINMENT TELEVISION, LLC, )  
 )  
Plaintiffs, )  
 )  
vs. ) NO. 07-CV-2103  
 )  
YOUTUBE, INC., YOUTUBE, LLC, )  
and GOOGLE, INC., )  
 )  
Defendants. )  
 )  
\_\_\_\_\_)  
 )  
THE FOOTBALL ASSOCIATION PREMIER )  
LEAGUE LIMITED, BOURNE CO., et al., )  
on behalf of themselves and all )  
others similarly situated, )  
 )  
Plaintiffs, )  
vs. ) NO. 07-CV-3582  
 )  
YOUTUBE, INC., YOUTUBE, LLC, and )  
GOOGLE, INC., )  
 )  
Defendants. )  
\_\_\_\_\_)

VIDEOTAPED DEPOSITION OF ALFRED PERRY  
NEW YORK, NEW YORK  
DECEMBER 16TH, 2009

JOB NO. 18178

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VIDEOTAPED DEPOSITION OF ALFRED  
PERRY, held at the offices of Mayer  
Brown, 1675 Broadway, New York, New  
York, pursuant to notice, before  
Maureen Ratto, Registered Professional  
Reporter and Notary Public of the State  
of New York on December 16, 2009, at  
10:08 a.m.

A P P E A R A N C E S

FOR THE PLAINTIFFS:

JENNER & BLOCK, LLP

BY: SCOTT B. WILKENS, ESQ.

1585 Broadway, New York, NY 10036

(202) 639-6000

FOR THE DEFENDANTS:

MAYER BROWN, LLP

BY: JOHN MANCINI, ESQ.

CHRISTINE HERNANDEZ, ESQ

JASON KIRCHNER, ESQ.

1675 Broadway, New York, NY 10019

(212) 506-2146

jmancini@mayerbrown.com

1 MR. WILKENS: Objection to the  
2 form of the question. You can answer.

3 A. As I think I said earlier, Bay  
4 was to -- Bay is monitoring for  
5 13:13:56 infringing content. If something is  
6 authorized and they have to use some  
7 judgment, otherwise it looks like there  
8 was discussion that was trying to  
9 impose on them this restrictions that  
10 13:14:20 they need to check with Amy's group if  
11 there's concerns or questions or  
12 perhaps even only take down things that  
13 look like they are these sort of clips  
14 when requested to do so. That is what  
15 13:14:41 it appears and that is my general  
16 recollection where we might have been  
17 at that time.

18 Q. Let me see if I can dive further  
19 into this in the next e-mail string  
20 13:14:50 from what we just read, you write to  
21 Scott Martin, John Salter and Eric  
22 Nancy Derwin-Weiss and Amy Powell,  
23 forwarding this e-mail that you had  
24 just received from Nancy Derwin-Weiss  
25 13:15:03 "I'm calling BayTSP now" do you recall

1 that reference?

2 A. Yes.

3 Q. A do you recall calling Bates  
4 after having received this e-mail from  
5 13:15:13 BayTSP Nancy Derwin-Weiss?

6 A. I don't recall it but.

7 Q. Do you recall what would have  
8 been said during this conversation?

9 MR. WILKENS: Objection to the  
10 13:15:21 form. (Check).

11 A. I don't, but -- I don't recall I  
12 don't recall making the call, but...

13 Q. Okay. In the next e-mail up  
14 Nancy Derwin-Weiss replies to you by  
15 13:15:49 saying "I spoke to Mark about the  
16 incident." She was referring to Mark  
17 Ishikawa, correct?

18 A. Yes.

19 Q. Continue with the e-mail, "he  
20 13:16:04 wasn't exactly apologetic about the  
21 incident. He said that from their  
22 perspective the Zack Braff footage  
23 appeared to be nothing more than  
24 pirated clips from the movie mashed  
25 13:16:15 together by an individual (who happens

1 to be Zack Braff). I asked why they  
2 didn't put a call into us for before  
3 issuing the take down notice since we  
4 just had the meeting about the very  
5 13:16:26 issue."

6 Just to break this down if I  
7 may, does this sentence refresh your  
8 recollection that as a result of July  
9 2006 meeting part of the new protocols  
10 13:16:39 was that BayTSP was to put a call into  
11 the marketing department at Paramount  
12 prior to issuing take down notices for  
13 Paramount clips? Do you see that  
14 sentence?

15 13:16:55 A. Yes. I do. Not taking down clips  
16 -- well, I guess depends what you mean  
17 by Paramount clips. If by Paramount  
18 clips you define it to mean authorized  
19 clips, then if they have some sense  
20 13:17:19 that something is an authorized clip  
21 they should put if a call -- or  
22 communicate, I'm not sure if it has to  
23 be a call, but some sort of  
24 communication to Amy's group, to  
25 13:17:32 clarify whether that particular clip of

1 all those clips that are out there is  
2 of concern or authorized.

3 Q. So is it your text that the  
4 instruction that was given at this July  
5 13:17:48 meeting was that if they had some sense  
6 that it was an unauthorized Paramount  
7 clip they should put in a call prior to  
8 issuing a take down notice?

9 A. Yes.

10 13:17:59 Q. And can you elaborate for me how  
11 BayTSP, how it was defined for them  
12 what it meant to have a sense as to  
13 whether or not it was authorized or  
14 not?

15 13:18:11 MR. WILKENS: Objection to the  
16 form.

17 A. I don't recall the specifics of  
18 how that was to be worked out between  
19 Amy's team and Bay's team. On the  
20 13:18:32 e-mail it just says they should put in  
21 a call before issuing the take down  
22 notice to something that appears to be  
23 authorized. So it's not clear to me  
24 what other directive that might have  
25 13:18:47 been given.

1 Q. Or what definition was given to  
2 that directive?

3 A. Correct.

4 Q. Ms. Derwin-Weiss goes onto  
5 13:18:56 state, same paragraph, continuing. "He  
6 said that they didn't have any reason  
7 to believe that the material wasn't  
8 pirated as we hadn't given them the  
9 trailer in advance in this instance the  
10 13:19:08 footage looked pirated. He said they  
11 were simply operating under the  
12 studio's directive to pull down  
13 unauthorized clips and he said he was  
14 going to direct BayTSP to stop  
15 13:19:18 searching YouTube for a content since  
16 it is creating too much of a headache  
17 for everyone."

18 Do you see that reference?

19 A. Yes.

20 13:19:29 Q. When you spoke to Mr. Ishikawa  
21 yourself which I think you said a  
22 moment ago you testified you recall  
23 having made the call did he indicate  
24 this same concern to you that he was  
25 13:19:47 going to direct BayTSP to stop



1 searching YouTube for Paramount's  
2 content because it was quite creating  
3 too much of a headache for everyone?

4 A. I think what I said was I don't  
5 13:19:57 recall making the call but I imagine,  
6 if I say I'm calling someone now, that  
7 I did. But I don't recall specifically  
8 making that call. But in this context  
9 trying to be responsive, I'm certain I  
10 13:20:11 made the call but I don't recall  
11 actually making the call.

12 Q. I understand. All I'm asking,  
13 sir, if in reading that sentence and  
14 that comment which I think would stick  
15 13:20:20 out to you, does that refresh your  
16 recollection as to what Mr. Ishikawa  
17 said in the conversation that they were  
18 going to -- he was going to instruct  
19 BayTSP to stop searching YouTube for  
20 13:20:32 Paramount content because --

21 A. He did not tell me that.

22 Q. He did not tell you that?

23 A. No.

24 Q. When you received this e-mail  
25 13:20:42 from Mr. Derwin-Weiss on July 25th,

# **Schapiro Exhibit 137**

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**From:** Mark M. Ishikawa  
**Sent:** Wednesday, November 08, 2006 9:19 PM  
**To:** Perry, Alfred - Paramount  
**Cc:** Evelyn Espinosa; Scott Martin; John Salter; Arielle Kim  
**Subject:** RE: Bay TSP - Clips  
**Importance:** High

Al, Scott, & John,

I have no idea what this is about other than the fact that Amy Powel does not like me or my company and is attempting to ruin my relationship with the studios. Nancy sent us links with a "White List" of places the clips are authorized to be on. A normal person would draw the conclusion that since she provided an authorized location list that any other place would be considered infringing, otherwise she should have said leave these clips alone.

All we did was send a clarification e-mail confirming the actions that we believe they have asked us to take. We have \*NOT\* taken any actions, just asking for clarification, and now we see this e-mail from Nancy. I believe her reactions are unwarranted and unjustified.

If we make a mistake I'm the first one to admit it and make it right. In this case I believe that BayTSP is being treated unfairly. We have been a long time partner with Paramount and this series of reactions is causing me great concern.

I would appreciate it if Scott could give me a call on my cell phone [REDACTED] to discuss this situation.

Thx

mark

-----Original Message-----

**From:** Perry, Alfred - Paramount [mailto:Alfred\_Perry@Paramount.com]  
**Sent:** Wed 11/8/2006 12:14 PM  
**To:** Mark M. Ishikawa  
**Cc:** Evelyn Espinosa; Scott Martin; John Salter  
**Subject:** Fw: Bay TSP - Clips

Mark, what is this about?

[Sent wirelessly from my BlackBerry device]

-----Original Message-----

**From:** Derwin-Weiss, Nancy  
**To:** Martin, Scott; Perry, Alfred - Paramount  
**CC:** Powell, Amy - Paramount  
**Sent:** Wed Nov 08 12:12:06 2006  
**Subject:** FW: Bay TSP - Clips

What will it take for Bay TSP to understand that they are not to initiate takedown actions without our express written approval?

Amy asked us to research other companies who perform competitive services that we can meet with.

Do you have a list of vendors...I will be happy to set up the initial meetings.

6/20/2008

HIGHLY CONFIDENTIAL

BAYTSP 003742450

Nancy Derwin-Weiss| VP Interactive Marketing Legal | Paramount Pictures| direct 323.956.5878

---

From: Derwin-Weiss, Nancy  
Sent: Wednesday, November 08, 2006 12:03 PM  
To: 'Evelyn Espinosa'  
Cc: Deana Arizala; Warren Kim; Richard Kawasaki; Mark M. Ishikawa; Powell, Amy - Paramount; Perry, Alfred - Paramount; Martin, Scott; Magid, Karen - Paramount  
Subject: RE: Bay TSP - Clips

If you find the Perfume clip on other sites, please send us the links to the sites and we will decide whether or not to pursue a take down action. Please do not initiate takedown actions without express prior written approval from us.

---

Nancy Derwin-Weiss| VP Interactive Marketing Legal | Paramount Pictures| direct 323.956.5878

---

From: Evelyn Espinosa [<mailto:evelyn@baytsp.com>]  
Sent: Wednesday, November 08, 2006 11:38 AM  
To: Derwin-Weiss, Nancy  
Cc: Deana Arizala; Warren Kim; Richard Kawasaki; Mark M. Ishikawa  
Subject: RE: Bay TSP - Clips

Hi Nancy,

Thanks for heads up for clips below. Just to make sure:

The perfume clip is exclusive and should only be available to view on aintitcool.com.

If we find it on youtube/google video/or any other site we will send a take down notice.

The bee movie clip is ok to stay up regardless of where it is found.

---

From: Derwin-Weiss, Nancy [[mailto:Nancy\\_Derwin-Weiss@Paramount.com](mailto:Nancy_Derwin-Weiss@Paramount.com)]  
Sent: Wednesday, November 08, 2006 11:13 AM  
To: Evelyn Espinosa  
Cc: Perry, Alfred - Paramount; Powell, Amy - Paramount; Scott Martin; Magid, Karen - Paramount; Tipton, Kristina; Teifeld, Tamar; Mark M. Ishikawa  
Subject: Bay TSP - Clips

Hi Evelyn:

Set forth below are links to two approved clips going out this week. Please exclude these clips from your search for pirated content on You Tube and other sites.

6/20/2008

HIGHLY CONFIDENTIAL

BAYTSP 003742451

Perfume Exclusive Clip – “Don’t Touch Anything” – Exclusive to AintItCool.com

[http://www.perfumemovie.com/public/video\\_files/perfume\\_dont\\_touch\\_anything\\_large.mov](http://www.perfumemovie.com/public/video_files/perfume_dont_touch_anything_large.mov)

Bee Movie Trailer – wide distribution

[http://www.beemovie.com/public/video\\_files/bee\\_movie\\_trailer1\\_large.mov](http://www.beemovie.com/public/video_files/bee_movie_trailer1_large.mov)

I will be sending you links to Freedom Writers clips and Flushed Away Featurettes when they become available.

Feel free to contact me with any questions.

Nancy

6/20/2008

HIGHLY CONFIDENTIAL

BAYTSP 003742452

## **Schapiro Exhibit 138**

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**From:** Michelena.hallie@mtvn.com  
**Sent:** Tuesday, October 31, 2006 5:15 PM  
**To:** Deana Arizala  
**Cc:** Morales, Cindy; Mark M. Ishikawa; Evelyn Espinosa; Courtney Nieman  
**Subject:** Re: Fwd: Viral Internet Marketing Clips

Got it. We should be able to authorize you to search a list soon

-----Original Message-----

From: Deana Arizala <deanaa@baytsp.com>  
To: Hallie, Michelena  
CC: Morales, Cindy; Mark M. Ishikawa <marki@baytsp.com>; Evelyn Espinosa <evelyn@baytsp.com>; Courtney Nieman <courtneyni@baytsp.com>  
Sent: Tue Oct 31 12:11:05 2006  
Subject: Fwd: Viral Internet Marketing Clips

Michelena,

I'm not sure if you received the email below, so just in case I am going to forward it.

Best Regards,

Deana Arizala

---

Deana Arizala  
Client Services Manager, BayTSP, Inc  
408.341.2365 (direct)  
408.341.2300 (voice)  
408.341.2399 (fax)

---

---

From: Deana Arizala  
Sent: Monday, October 30, 2006 10:09 AM  
To: Michelena.hallie@mtvn.com  
Cc: Morales, Cindy; Mark M. Ishikawa; Evelyn Espinosa; Courtney Nieman  
Subject: RE: Viral Internet Marketing Clips

6/11/2008

HIGHLY CONFIDENTIAL

BAYTSP 001125469

Michelena,

Below is a list of VH1 shows I'm gathered from the links below. I do not have these shows in my list. Please let me know if these titles should be added in Cims.

VH1

The Wendy Williams Experience

Totally Awesome

Flavor of Love

Hogan Knows Best

Freestyle 59

Thanks Michelena.

Best Regards,

Deana Arizala

-----  
Deana Arizala

Client Services Manager, BayTSP, Inc

408.341.2365 (direct)

408.341.2300 (voice)

408.341.2399 (fax)  
-----

6/11/2008

HIGHLY CONFIDENTIAL

BAYTSP 001125470



-----Original Message-----

From: Michelena.hallie@mtvn.com  
Sent: Friday, October 27, 2006 3:23 PM  
To: Deana Arizala  
Cc: Morales, Cindy  
Subject: FW: Viral Internet Marketing Clips

Is this sufficient information? If so, you can now take down VH1 clips

2 1/2 minutes or over, other than those noted below.

-----Original Message-----

From: Kadetsky, Deborah  
Sent: Friday, October 27, 2006 6:07 PM  
To: Cheeks, George; Maxwell, Tony  
Cc: Wilson, Adam; Hallie, Michelena; Imm, Tina  
Subject: RE: Viral Internet Marketing Clips

George, are you able to do your sweep of clips according to who's posted them?

If that is the case, the clips that we've authorized to be posted are under the usernames "vh1staff" and "reaction2006"

If you need specific links, here is a list of what we've posted as approved clips to date:

<http://www.youtube.com/watch?v=qVVGT7Rfrvk>

<http://www.youtube.com/watch?v=jFoQNdwaGys>

[http://www.youtube.com/watch?v=\\_5vjL2stAz0](http://www.youtube.com/watch?v=_5vjL2stAz0)

[http://www.youtube.com/watch?v=M-G\\_NQZb1II](http://www.youtube.com/watch?v=M-G_NQZb1II)

<http://www.youtube.com/watch?v=qvUzUOSbs9Y>

<http://www.youtube.com/watch?v=xPfTPn-eGKk>

<http://www.youtube.com/watch?v=3saVMo96328>

<http://www.youtube.com/watch?v=PjiZqOOAipw>

<http://www.youtube.com/watch?v=x1ycbHjePjM>

6/11/2008

HIGHLY CONFIDENTIAL

BAYTSP 001125471

<http://www.youtube.com/watch?v=hFoCygnKOaA>

<http://www.youtube.com/watch?v=4CtHP6Uj-zM>

<http://www.youtube.com/watch?v=Dy9lYAEIqlE>

<http://www.youtube.com/watch?v=kihSHIoW-Tg>

[http://www.youtube.com/watch?v=yZ1SEdh\\_JPc](http://www.youtube.com/watch?v=yZ1SEdh_JPc)

[http://www.youtube.com/watch?v=ia\\_pl6rVg\\_k](http://www.youtube.com/watch?v=ia_pl6rVg_k)

<http://www.youtube.com/watch?v=zlbL-zhMK8k>

<http://www.youtube.com/watch?v=ynJmXSht2jI>

<http://www.youtube.com/watch?v=uXnx5QxpIRc>

<http://www.youtube.com/watch?v=zgB11BKpwjQ>

[http://www.youtube.com/watch?v=pAkp\\_Hr5rN4](http://www.youtube.com/watch?v=pAkp_Hr5rN4)

<http://www.youtube.com/watch?v=BRbM2qfD08U>

<http://www.youtube.com/watch?v=QQxyhtYk3CI>

Do you have a sense of how frequently we'll be doing this takedown sweep? I want to make sure than any future postings through our current process don't get removed accidentally.

Thanks,

deb

-----Original Message-----

From: Cheeks, George

Sent: Friday, October 27, 2006 1:33 PM

To: Kadetsky, Deborah; Maxwell, Tony

Cc: Wilson, Adam

Subject: Re: Viral Internet Marketing Clips

If you could send a copy directly to Michelina Hallie and copy me that would be great!

-----Original Message-----

From: Kadetsky, Deborah

6/11/2008

HIGHLY CONFIDENTIAL

BAYTSP 001125472

To: Cheeks, George; Maxwell, Tony  
CC: Wilson, Adam  
Sent: Fri Oct 27 09:48:26 2006  
Subject: RE: Viral Internet Marketing Clips

Hi George,

Did you get my list via Tina Imm? I can send to you directly if not...

Deb

-----Original Message-----

From: Cheeks, George  
Sent: Friday, October 27, 2006 8:47 AM  
To: Maxwell, Tony  
Cc: Wilson, Adam; Kadetsky, Deborah  
Subject: Re: Viral Internet Marketing Clips

We need everything that you have seeded thusfar as we are engaging an outside service to send take down notices for full episodes and clips in excess of 2 minutes and 30 seconds and we don't want to have notices sent for content we seeded. That said, if that is too big a task I would at least hit the stuff that we seeded over the past several months.

Thanks.

-----Original Message-----

From: Maxwell, Tony  
To: Cheeks, George  
CC: Wilson, Adam; Kadetsky, Deborah  
Sent: Wed Oct 25 11:10:26 2006  
Subject: Viral Internet Marketing Clips

Hello George,

6/11/2008

Nigel asked me to follow up with you about your request for a list of viral clips we are currently supplying to websites like youtube.com.

Are you looking for a monthly figure or total amount since a certain date.

Please inform.

Many thanks,

Tony

--

Tony Maxwell

VP Vh1 On Air Promotions

212-846-7867

tony.maxwell@vh1staff.com

6/11/2008

HIGHLY CONFIDENTIAL

BAYTSP 001125474

## **Schapiro Exhibit 139**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY )  
PARTNERS, COUNTRY MUSIC )  
TELEVISION, INC., PARAMOUNT )  
PICTURES CORPORATION, and BLACK )  
ENTERTAINMENT TELEVISION, LLC, )  
Plaintiffs, )  
vs. ) NO. 07-CV-2103  
YOUTUBE, INC., YOUTUBE, LLC, )  
and GOOGLE, INC., )  
Defendants. )

THE FOOTBALL ASSOCIATION PREMIER )  
LEAGUE LIMITED, BOURNE CO., et al., )  
on behalf of themselves and all )  
others similarly situated, )  
Plaintiffs, )  
vs. ) NO. 07-CV-3582  
YOUTUBE, INC., YOUTUBE, LLC, and )  
GOOGLE, INC., )  
Defendants. )

VIDEOTAPED DEPOSITION OF MICHELENA HALLIE  
NEW YORK, NEW YORK  
THURSDAY, DECEMBER 10, 2009  
JOB NO. 18264

A P P E A R A N C E S:

FOR THE PLAINTIFFS VIACOM INTERNATIONAL,  
INC.:

JENNER & BLOCK  
1099 New York Avenue, NW, Suite 900  
Washington, D.C. 2000  
(202) 639-6000  
BY: SCOTT WILKENS, ESQ.  
Swilkens@jenner.com

FOR DEFENDANTS, GOOGLE:  
WILSON SONSINI GOODRICH & ROSATI  
650 Page Mill Road  
Palo Alto, CA 94304-1050  
BY: MAURA L. REES, ESQ.  
Mrees@wsgr.com

ALSO PRESENT:

Carlos King, Videographer

MICHELENA HALLIE

marked as Defendant's Exhibit  
Hallie-45 for identification as of  
this date by the Reporter.)

15:50:19 A. Okay.

Q. Can you identify Exhibit 45?

A. It appears to be an E-mail  
chain between me, various people at  
BayTSP, and then, ultimately, including  
Cindy Morales.

Q. And in the very middle of  
the first page, there is an E-mail from  
you responding to a question from  
Courtney Nieman. Well, first Courtney  
Nieman's question at the bottom of the  
page, it says, "A question came up from  
the group of people that are  
approving/declining the video clips.

What about commercials/trailers/promos,  
should these be approved or declined."

And your response is "If  
there are commercials/trailers/promos  
for programs on the list, they should  
be taken down, unless it is from the  
addresses that Cindy sent to you that



MICHELENA HALLIE

are clips that we uploaded ourselves."

And it looks, at the very top, you are asking Cindy if she has the, "White List."

First of all, what is the White List?

A. I am assuming from this, that it is the list of clips that MTVN authorized to be uploaded.

Q. And how was the White List compiled?

A. People within MTVN were directed to send any user names or other identifying information to Cindy Morales and/or Warren Solow's group, depending on the time.

Q. And in your E-mail in the middle of the page that starts, "If there are commercials/trailers/promos," your instruction is, "they should be taken down unless they are from the addresses Cindy sent to you."

So was the policy, at that time, that clips that appeared to be

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MICHELENA HALLIE

commercials, trailers or promos should  
be taken down if they were not uploaded  
by Viacom or someone affiliated with  
Viacom?

A. That would appear to be  
correct. If we hadn't authorized their  
upload, they should be taken down.

MR. WILKENS: Can we take  
another, really quick, break?

MS. REES: Sure.

MR. WILKENS: Thanks.

THE VIDEOGRAPHER: The time  
is 3:53 p.m. and we are off the  
record.

(Whereupon, a recess was  
held.)

THE VIDEOGRAPHER: The time  
is 3:58 p.m. and we are back on  
the record.

BY MS. REES:

MS. REES: Exhibit 46.

(Whereupon, the  
aforementioned documents, VIA  
11788096 and VIA 11787096, were

MICHELENA HALLIE

January '07 than it became in April of '07.

Q. And do you have any  
16:01:52 recollection of whether that's how the  
policy evolved, at least between these  
two dates?

A. I don't.

Q. Did the difference in policy  
16:02:30 about whether to takedown or leave up  
commercials and advertising clips for  
MTVN programming, did it have to do  
with the fact that January 2007 was  
before the mass takedown and Viacom  
16:02:48 wanted to take down as many clips as  
possible, whereas April 2007 was after  
the mass takedown and there was no  
longer that goal?

MR. WILKENS: Objection to  
16:03:01 the form.

A. I don't recall that being  
the case. I recall all of these  
decisions, as I think the documents  
will back up, were evolving in part of  
16:03:14 a legal analysis.

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MS. REES: Exhibit 47.

(Whereupon, the

aforementioned document, BayTSP

16:03:49 004295197, was marked as

Defendant's Exhibit Hallie-47 for

identification as of this date by

the Reporter.)

A. Okay.

16:04:13 Q. Can you identify Exhibit 47?

A. It is an E-mail from

Courtney Nieman to Travis Hill with

copies to various people, including me.

Q. And is this the list of

16:04:26 account names that was described in a

previous E-mail as the White List?

A. It -- judging from the

timing, that E-mail that you are

referring to was January 3rd and this

16:04:49 is January 31st, so it is possible that

it is.

Q. And this was -- the purpose

of giving this list to BayTSP was so

that BayTSP would know not to take down

16:05:08 videos that Viacom had posted to

MICHELENA HALLIE

YouTube under the account names listed  
in Exhibit 47?

16:05:19 A. Well, that they not take  
down clips that Viacom had authorized  
to be posted. I don't know if it was  
Viacom itself or agents of Viacom.

Q. In the early 2007 timeframe,  
were you familiar with a marketing firm  
that Viacom was using called Fanscape?

A. I have heard of Fanscape. I  
don't remember when I first heard of  
it.

Q. Do you know why Fanscape is  
not on this list? Because Fanscape was  
posting videos on behalf of Viacom at  
this time, right?

MR. WILKENS: Objection to  
the form of the question.

16:05:59 A. I don't recall. I recall  
hearing the name, Fanscape. I don't  
even remember in what context.

Q. Looking at this list now, is  
it your belief that this list is  
incomplete, that even as of January 31,

MICHELENA HALLIE

2007, there are quite a few more  
authorized clips that appear on this  
list?

16:06:24 A. I don't know.

MS. REES: Exhibit 48.

(Whereupon, the  
aforementioned documents, VIA  
16669294 through '298, were marked  
16:06:56 as Defendant's Exhibit Hallie-48  
for identification as of this date  
by the Reporter.)

A. Okay.

Q. Can you identify Exhibit 48?

16:10:10 A. It is an E-mail chain that  
starts between the various people,  
apparently, of Paramount Pictures.  
Then Al Perry forwards it to Mark  
Morril, Scott Martin and myself,  
16:10:39 copying Rebecca Prentice. I respond  
and Mike Fricklas appears to respond.

Q. In the second page, there  
appears to be a question from  
Paramount; "Can you clarify Paramount's  
16:10:57 position on dealing with YouTube at a